

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Randall D. Davis,)	
)	C/A No. 3:11-1860-MBS-PJG
Plaintiff,)	
)	
vs.)	ORDER
)	
Richland County Recreation Commission,)	
)	
Defendant.)	
_____)	

Plaintiff Randall D. Davis filed the within complaint on July 29, 2011, alleging that he was terminated in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-3. Plaintiff also alleges that the action “further arises under the First Amendment of the United States Constitution and 42 U.S.C. § 1983.” In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Paige J. Gossett for pretrial handling.

On October 5, 2011, Defendant filed a motion to dismiss Plaintiff’s claims for relief under the First Amendment and § 1983 on the grounds that Plaintiff’s sole cause of action alleges a claim under Title VII. On October 24, 2011, Plaintiff filed a response in which he stipulated that he has not asserted a claim under the First Amendment or § 1983, and that the use of the language was inadvertent and should be treated as stricken from the complaint. Defendant filed a reply on November 1, 2012.

On June 6, 2012, the Magistrate Judge issued a Report and Recommendation in which she recommended that the following statement in the complaint be stricken: “This action further arises under the First Amendment of the United States Constitution and 42 U.S.C. § 1983.” The Magistrate

Judge further recommended that Defendant's motion be terminated. No party filed objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). This court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1). This court may also receive further evidence or recommit the matter to the Magistrate Judge with instructions. Id. This court is obligated to conduct a de novo review of every portion of the Magistrate Judge's report to which objections have been filed. Id. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has thoroughly reviewed the record. The court adopts the Report and Recommendation and incorporates it herein by reference. The referenced sentence is stricken from the complaint. Defendant's motion to dismiss (ECF No. 5) is **denied as moot**. The matter is recommitted to the Magistrate Judge for further pretrial handling.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
Chief United States District Judge

Columbia, South Carolina

June 26, 2012